

No. 12-0173 PO

On July 16, 2013, the parties filed a “Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission.” The document was signed by the parties and their respective attorneys.

By regulation, we may issue a decision without a hearing when the parties file stipulated facts, signed by the parties and their attorneys, and waive hearing before this Commission. 1 CSR 15-3.446(3).¹ The following facts are undisputed.

Findings of Fact

1. Justin T. LaForest is licensed as a peace officer by the Missouri Department of Public Safety, and was so at all times relevant to this case.

2. On December 19, 2006, LaForest was on active duty for the Columbia, Missouri, Police Department. At 2020 hours, he conducted a traffic stop of a car that failed to have taillights illuminating the rear of the vehicle.

3. As LaForest exited his patrol car to approach the stopped car, a male seated in the right front passenger seat, later identified as Rodman Marine, exited the car and proceeded to walk away.

4. Seeing Marine exit the car, LaForest gave him several verbal commands to get back into the car, but Marine continued to walk away from the stopped car.

5. The driver of the stopped car, later identified as Tylanedor Daleney, remained seated in the front driver seat as LaForest engaged with Marine.

6. As Marine continued to walk away, LaForest drew his service weapon, verbally commanded Marine to get on the ground, and using the department-issued radio attached to his uniform requested assistance to be dispatched to the scene.

7. Marine continued to walk away from the stopped car.

8. LaForest drew his department-issued taser and verbally commanded Marine to show his hands or else he would be “tased.”

¹ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

9. After Marine failed to comply with LaForest's commands, LaForest aimed and fired his department-issued taser at Marine's lower leg. He aimed at the lower leg because Marine was wearing a heavy winter jacket covering most of his upper body.

10. The taser probe struck Marine in the region of his lower leg, but failed to have any effect.

11. LaForest then drew his department-issued ASP baton and struck Marine in the lower leg, causing Marine to fall to the ground.

12. As Marine stood up and regained his footing, LaForest used his baton to strike Marine approximately eight times in the upper body area. The strikes appeared not to have any effect on Marine.

13. After approximately eight strikes by LaForest, the situation de-escalated when Marine and LaForest paced around one another, not making any contact.

14. LaForest began to push Marine back toward the stopped vehicle by placing his hand on Marine's shoulder area.

15. While LaForest was pushing Marine back toward the stopped car, the sirens of the cars of the additional officers responding to the incident could be heard, growing increasingly louder.

16. When LaForest and Marine reached the stopped car, the situation further de-escalated when both remained motionless for approximately 16 seconds.

17. After the situation had de-escalated, and after the additional officers began arriving at the scene, LaForest used his baton to strike Marine five more times in the upper body.

18. LaForest's final baton strike hit Marine in the upper shoulder and face, causing Marine to fall to the ground and to suffer a fractured jaw and eye socket.

19. Within seconds of Marine falling to the ground, approximately five officers ran up to the scene and helped control Marine while he remained on the ground.

Conclusions of Law

We have jurisdiction under § 590.080.2, RSMo (Supp. 2012), which provides that the Director may file a complaint with this Commission, and that the Commission shall then “determine whether the [D]irector has cause for discipline, and...shall issue findings of fact and conclusions of law on the matter.”

The Director is responsible for issuing and disciplining the licenses of Missouri peace officers. § 590.020, .030, and .080. When the Director files a complaint with this Commission asking us to determine there is cause for discipline, the Director bears the burden of proving by a preponderance of the evidence that the licensee committed an act for which the law gives the Director the authority to discipline the license. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrated “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Section 590.080.1 authorizes discipline as follows:

The director [of the Department of Public Safety] shall have cause to discipline any peace officer licensee who:

...

(2) Has committed any criminal offense, whether or not a criminal charge has been filed; [or]

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

Cause for discipline exists under § 590.080.1(2), because LaForest committed a criminal offense. His five additional and final baton strikes to Marine’s upper body and face constituted the crime of assault in the third degree, under § 565.070, RSMo (2000).

Cause for discipline also exists under § 590.080.1(3). LaForest delivered the five additional and final baton strikes to Marine's upper body and face while LaForest was on active duty. LaForest's acts involved moral turpitude, inasmuch as they involved "baseness, vileness, or depravity" and were "contrary to justice, honesty, modesty or good morals." *In re Duncan*, 844 S.W.3d 443, 444 (Mo. 1993) (defining moral turpitude in attorney disciplinary proceeding). *See also Brehe v. Mo. Dep't of Elem. and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007) (applying same in teacher licensure case). The acts also demonstrated a reckless disregard for the safety of the public or any person.

Summary

We find cause exists to discipline Mr. LaForest's peace officer license under § 590.080.1(2) and (3).

SO ORDERED on August 1, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner